lading, a prerequisite to the ready sale of the goods. On the particular facts of the principal case, however, the conclusion of the court must be supported, for there was not such a material delay as to excuse performance on the part of the defendant. *Cf. Smith* v. *Vertue*, 9 C. B. (N. S.) 214; *Linnell* v. *Leon*, *supra*.

BILLS AND NOTES — PURCHASER FOR VALUE WITHOUT NOTICE — RIGHTS OF PAYEE OF A STOLEN CERTIFIED CHECK WHO HAS GIVEN VALUE FOR IT. — A. drew a check on the defendant bank, payable to the plaintiff. The defendant certified the check. B. stole it and negotiated it to the plaintiff by posing as a messenger from A. The plaintiff sues for the amount of the check. *Held*, that he cannot recover. *Empire Trust Co.* v. *Manhattan Co.*, 162 N. Y. Supp. 629 (App. Div.).

At common law a payee could be a holder in due course. *Watson* v. *Russell*, 3 B. & S. 34; *Fairbanks* v. *Snow*, 145 Mass. 153, 13 N. E. 596. *Contra*, *Charlton Plow Co.* v. *Davidson*, 16 Neb. 374. But under the Negotiable Instruments Law such a result is not so easily reached. For the definition of a holder in due course apparently requires negotiation. See BRANNAN, NEG. INST. LAW, § 52. And "negotiation" of a bill "payable to order" is accomplished by "the indorsement of the holder completed by delivery." See BRANNAN, *supra*, § 30. As the maker does not pass the bill to the payee by indorsement, in capacity of a holder, this would seem to preclude the payee from becoming a holder in due course. But the general definition of negotiation is a transference "from one person to another in such manner as to constitute the transferee the holder thereof." See BRANNAN, *supra*, § 52. And a payee may be a holder. See BRANNAN, *supra*, § 190. Evidently considering the troublesome phraseology before mentioned as not being an intended modification of the general definition, many courts have held that a payee may be a holder in due course. *Boston Steel & Iron Co.* v. *Steuer*, 183 Mass. 140, 66 N. E. 646; *Brown* v. *Rowan*, 91 N. Y. Misc. 220, 154 N. Y. Supp. 1098. See *Lloyd's Bank* v. *Cooke*, [1907] 1 K. B. 794, 808. The court, however, in the principal case distinguishes these cases on the ground that in them the improper negotiation was by an agent, and not by a thief. This, it was argued, prevented the payee from being an "immediate" party and thus allowed him to be a holder in due course. It would seem, however, that such analysis is founded on feeling rather than construction. For granted the inference in the clause requiring "indorsement of the holder," then in neither case can the payee be a holder in due course; while if the general definition is to cover, it must apply equally well in either case.

BILLS AND NOTES — RIGHTS OF A DONEE AFTER MATURITY OF A NOTE VOIDABLE FOR ILLEGALITY. — The defendant executed and delivered his promissory note, bearing a secular date, on Sunday. The plaintiff who is suing on the note is a donee after maturity without actual notice. *Held*, that he may recover. *Gooch* v. *Gooch*, 160 N. W. 333 (Ia.).

A contract entered into on Sunday is voidable merely and not void under the Sunday law of Iowa. *Collins* v. *Collins*, 139 Ia. 703, 117 N. W. 1089. See CODE, § 5040. The defense of the maker of a note voidable for this or any other reason is usually considered to be personal or equitable. See 2 AMES, CASES ON BILLS AND NOTES, 812. It follows on well-known principles that neither a donee nor a purchaser after maturity should recover. *Bank of British North America* v. *McComb*, 21 Manitoba 58; *Wing* v. *Dunn*, 24 Me. 128; *Cowing* v. *Altman*, 71 N. Y. 435. Courts of Iowa have, however, held that the indorsee for value without notice of a matured note made on Sunday but dated on a secular day may recover. *Leightman* v. *Kadetska*, 58 Ia. 676, 12 N. W. 736. See *Johns* v. *Bailey*, 45 Ia. 241. The theory of these cases on which the court in the principal case relied is that "it is only against a person in equal fault that a defendant can be allowed to allege his own turpitude." *Leightman* v. *Ka-*

detska, supra. Thus the defense of illegality is not considered to be an equity in favor of the maker. By such a decision the clearly announced and accepted policy of the legislature that secular transactions shall not take place on Sunday is practically defeated. Where the transferee has paid no value there can be no possible counterbalancing policy requiring his protection.

CARRIERS — BILLS OF LADING — CONSTRUCTION OF "RESTRAINT OF PRINCES" IN A BILL OF LADING. — The captain of a German ship when in mid-ocean obeyed an order from the owners to return to New York on account of the declaration of war between Germany and the Entente Powers. The ship is libeled for non-delivery of a cargo billed to Plymouth and Cherbourg on a bill of lading which contained the usual "restraint of princes" exemption. The court found, as facts, that the captain acted under orders, and not in the use of his discretion as master; that, at the time, war was imminent, but was not actually declared until two days later; and that, if the ship had proceeded at its usual speed and without harbor delays it would have cleared the ports about thirteen hours before the declaration of war. *Held*, that the libellant may recover. *Guaranty Trust Co.* v. *Kronprinzessin Cecelie*, 56 N. Y. L. J. 915 (C. C. A., 1st Circ.).

It was apparently conceded in the case that no liability arises in favor of cargo owners, if the decision of a captain in an emergency turns out adversely to their interests. The liability in the principal case was predicated on the fact that the captain was acting on the owner's orders. But it seems probable that the conceded rule, as that of general average, is based on the idea that ship and cargo are a joint maritime enterprise. See HUGHES, ADMIRALTY, § 20. The individual interest is subordinate to that of the many. So it would seem justifiable to extend in law what the wireless has extended in fact, and allow a freedom from liability to follow the owner's discretion when circumstances make him the better judge. In any case, the "restraint of princes" exemption in the bill of lading should prevent recovery. Early cases lay down the rule that the restraint must be actual and operative, not merely expected and contingent. *Atkinson* v. *Ritchie*, 10 East 530, 531; *Hadkinson* v. *Robinson*, 3 Bos. & P. 388, 392; *King* v. *Delaware Ins. Co.*, 6 Cranch (U. S.) 71. But the modern law, pursuing a general tendency to construe contracts rationally rather than literally, has modified this rule, and it seems that a well-founded fear of restraint is sufficient. See ABBOTT, SHIPPING, 14 ed., 627; STEPHENS, BILLS OF LADING, 53. Thus, where a blockade has been established, the clause is held to cover this contingency even though there are chances for the ship to get through. *Geipel* v. *Smith*, L. R. 7 Q. B. 404, 409; *The Styria*, 101 Fed. 728, 731, aff'd 186 U. S. 1. *Cf. contra, Kacianoff* v. *China, etc. Co.*, [1913] 3 K. B. 407. Furthermore, even though no actual blockade has been established, a grave danger of capture is considered sufficient restraint to bring the case within the saving clause. *Nobel's Explosives Co.* v. *Jenkins & Co.*, [1896] 2 Q. B. 326, 331. But *cf. Matsui & Co.* v. *Watts, etc. Co.*, 114 L. T. R. (N. S.) 326. Even danger to shipping from mine fields is considered within the term "restraint of princes." *East Asiatic Co.* v. *S. S. Tronto Co.*, 31 T. L. R. 543. If a given condition creating reasonable risk of capture is within the clause, it would seem but just that likewise a reasonable risk of a condition which would result in capture should come within the clause.

CONFLICT OF LAWS — SHARES OF STOCK — JURISDICTION TO ADJUDICATE OWNERSHIP. — A resident of Tennessee died possessed of stock in a Kentucky corporation the certificates being in his possession. A Tennessee court granted letters of administration to the widow, and finding that the deceased was domiciled in Tennessee, decreed that the widow was entitled to the stock according to Tennessee law. The widow brought suit against the corporation in Kentucky to have the stock transferred to her on the books of the corpora-